

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

JESSE L. LOSEY,

Plaintiff,

v.

TIFFANY NAIL,

Defendant.

CIVIL ACTION NO.: CV612-078

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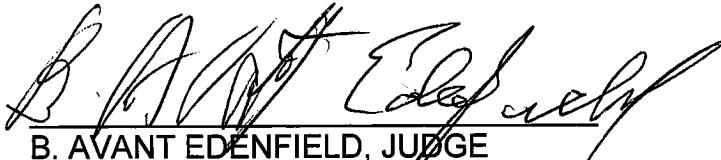
ORDER

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Plaintiff filed Objections. In his Objections, Plaintiff contends that the Magistrate Judge resolved credibility issues in his Report, even though Federal Rule of Civil Procedure 56 requires that all evidence be construed in his favor as the non-moving party. Plaintiff contends that a jury question remains regarding whether the officer at the window at the time of his alleged rape was Defendant or another officer. Contrary to Plaintiff's assertion, the Magistrate Judge did not resolve any credibility issues in recommending that Defendant's Motion for Summary Judgment be granted. Instead, the Magistrate Judge looked to the evidence of record, which revealed Plaintiff's own testimony that a white female officer looked inside his cell during the time of the alleged rape, and this female could not have been Defendant, as other evidence of record reveals that she is a black female.

Plaintiff also notes the Eleventh Circuit Court of Appeals' determination that Defendant was not entitled to judgment on the pleadings because Plaintiff's allegations, if true, revealed that it was at least plausible that Defendant was deliberately indifferent to a known risk to Plaintiff's safety. (Doc. No. 40, p. 7). However, on a motion for summary judgment, the burden shifts to the non-moving party to show that there remains a genuine dispute as to any fact material to that non-moving party's claim. FED. R. CIV. P. 56(a) (Summary judgment "shall" be granted if "the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law."). Plaintiff failed to overcome his burden.

Plaintiff's Objections are overruled. The Magistrate Judge's Report and Recommendation, as supplemented herein, is adopted as the opinion of the Court. Defendant's Motion for Summary Judgment is **GRANTED**. Plaintiff's Complaint is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 18 day of August, 2014.



B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA